

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1761

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

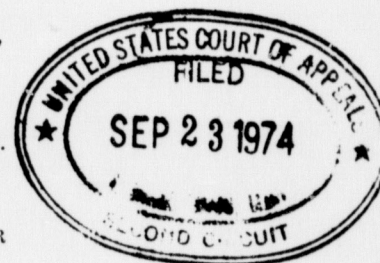
UNITED STATES OF AMERICA,

VS.

KEITH HALBACH,

Appellee,

Appellant.



ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NEW YORK
CR. 1973-307.

APPENDIX

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Western District of New York,
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3

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INDEX TO APPENDIX.

	page
Indictment.....	1
Excerpts of Testimony.....	7
Charge of the Court.....	29
Exceptions at Side Bar.....	48
Request.....	50
Question asked by Jury.....	51
Verdict.....	53
Judgment and Commitment.....	56

Indictment.

ORIGINAL COPY

In the District Court of the United States

For the Western District of New York

THE UNITED STATES OF AMERICA

-vs-

KEITH C. HALBACH and

JACK E. GILMET

MARCH 1973 SESSION ~~XXXXXX~~

(Impaneled July 9, 1973)

No. 1973 3

Vio. T. 18, U.S.C.,
§§371, 495

COUNT I

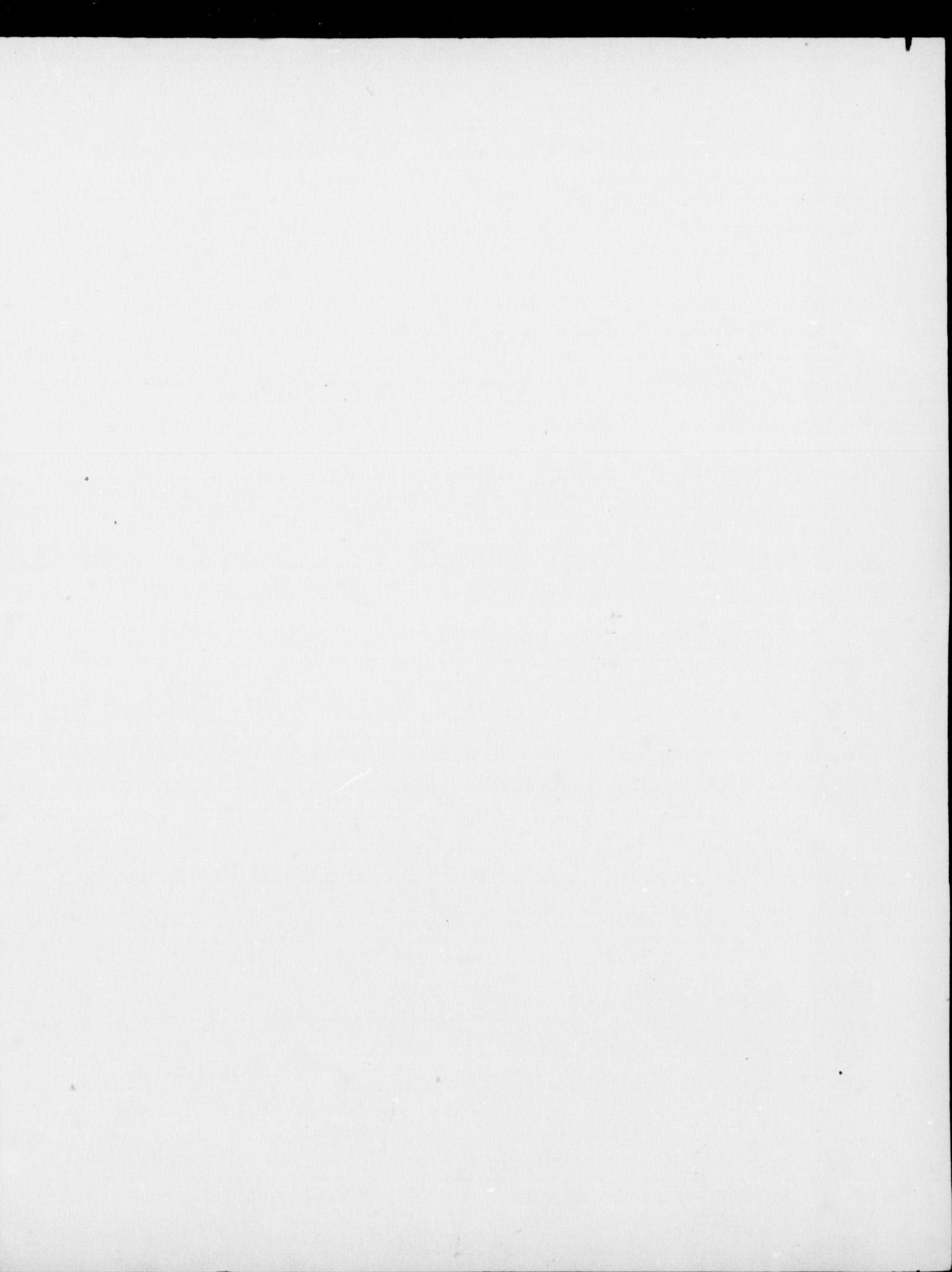
The Grand Jury Charges:

That beginning on or about the 9th day of August, 1973, in the Western District of New York, the defendants, KEITH C. HALBACH and JACK E. GILMET, wilfully, knowingly, and unlawfully, did combine, conspire and agree together with each other to defraud the United States and to commit offenses against the United States, to wit, to violate Title 18, United States Code, §495, by uttering and publishing as true, forged United States Savings Bonds, in violation of Title 18, United States Code, Section 371.

OVERT ACTS

At the times hereinafter mentioned the defendants committed the following overt acts in furtherance of said conspiracy and to effect the objects thereof:

1. On or about the 9th day of August, 1973, the defendant, KEITH C. HALBACH removed numerous United States Savings Bonds owned by Richard Clarence Yox from a residence at 37 Culver Road, Buffalo, New York.



Indictment.

2. On or about the 9th day of August, 1973, the defendants travelled from 37 Cuiver Road, Buffalo, New York, with numerous United States Savings Bonds owned by Richard Clarence Yox to the Manufacturers and Traders Trust Company at 284 Abbott Road in Buffalo, New York, in an automobile driven by the defendant, JACK E. GILMET.

3. On or about the 9th day of August, 1973, the defendant, KEITH C. HALBACH, opened a savings account in the name of Richard C. Yox at the Manufacturers and Traders Trust Company at 284 Abbott Road in Buffalo, New York.

4. On or about the 9th day of August, 1973, in Buffalo, New York, the defendant, KEITH C. HALBACH, forged the endorsement "Richard C. Yox" on a \$1,000.00 Series E United States Savings Bond Serial Number M4001204339E.

5. On or about the 9th day of August, 1973, at the Manufacturers and Traders Trust Company, 284 Abbott Road, Buffalo, New York, the defendant, KEITH C. HALBACH, presented for payment a \$1,000.00 Series E United States Savings Bond, Serial Number M4001204339E and received therefor \$1124.80 in cash, of which amount \$200.00 was then deposited in the savings account opened by the defendant, KEITH C. HALBACH, in the name of Richard C. Yox.

6. On or about the 9th day of August, 1973, the defendants travelled from the Manufacturers and Traders Trust Company at 284 Abbott Road, Buffalo, New York with numerous United States Savings Bonds owned by Richard Clarence Yox to the Manufacturers and Traders Trust Company at 490 Dorrance Avenue, Buffalo, New York, in an automobile driven by the defendant, JACK E. GILMET.

Indictment.

7. On or about the 9th day of August, 1973, in Buffalo, New York, the defendant, KEITH C. HALBACH, forged the endorsement "Richard C. Yox" on two Series E United States Savings Bonds owned by Richard Clarence Yox, to wit, Serial Numbers M4001204337E with a face amount of \$1,000.00, and Serial Number M4001204338E with a face amount of \$1,000.00.

8. On or about the 9th day of August, 1973, at the Manufacturers and Traders Trust Company, 490 Dorrance Avenue, Buffalo, New York, the defendant, KEITH C. HALBACH presented for payment the two Series E United States Savings Bonds, owned by Richard Clarence Yox, previously described herein at paragraph 7.

9. On or about the 9th day of August, 1973, the defendants travelled from the Manufacturers and Traders Trust Company, 490 Dorrance Avenue, Buffalo, New York, with numerous United States Savings Bonds owned by Richard Clarence Yox to the Manufacturers and Traders Trust Company, 284 Abbott Road, Buffalo, New York.

10. On or about the 9th day of August, 1973, at the Manufacturers and Traders Trust Company, 284 Abbott Road, Buffalo, New York, the defendant, KEITH C. HALBACH, presented for payment the two Series E United States Savings Bonds owned by Richard Clarence Yox, previously described herein at paragraph 7.

11. On or about the 9th day of August, 1973, at the Manufacturers and Traders Trust Company, 227 Ridge Road, Lackawanna, New York, the defendant, KEITH C. HALBACH,

Indictment.

withdrew \$200.00 in cash from the savings account previously opened by said defendant in the name of Richard C. Yox.

12. On or about the 9th day of August, 1973, in Lackawanna, New York, the defendants divided between themselves \$1124.80.

COUNT II

The Grand Jury further charges:

On or about the 9th day of August, 1973, in Buffalo, New York, the defendant, KEITH C. HALBACH, did forge the endorsement of Richard C. Yox on a United States Savings Bond, to wit, Serial Number M4001204339E Bond with a face amount of \$1,000.00, owned by Richard Clarence Yox, for the purpose of obtaining and receiving a sum of money from the United States and its agents, in violation of Title 18, United States Code, §495.

COUNT III

The Grand Jury further charges:

On or about the 9th day of August, 1973, in Buffalo, New York, the defendant, KEITH C. HALBACH, did forge the endorsement of Richard C. Yox on a United States Savings Bond, to wit, Serial Number M4001204337E with a face amount of \$1,000.00, owned by Richard Clarence Yox, for the purpose of obtaining and receiving a sum of money from the United States and its agents, in violation of Title 18, United States Code, §495.

Indictment.

COUNT IV

The Grand Jury further charges:

On or about the 9th day of August, 1973, in Buffalo, New York, the defendant, KEITH C. HALBACH, did forge the endorsement of Richard C. Yox on a United States Savings Bond, to wit, Serial Number M4001204338E Bond with a face amount of \$1,000.00, owned by Richard Clarence Yox, for the purpose of obtaining and receiving a sum of money from the United States and its agents, in violation of Title 18, United States Code, §495.

COUNT V

The Grand Jury further charges:

On or about the 9th day of August, 1973, in Buffalo, New York, the defendant, KEITH C. HALBACH, did utter and publish as true a forged United States Savings Bond, to wit, Serial Number M4001204339E Bond, with a face amount of \$1,000.00, owned by Richard Clarence Yox, with intent to defraud the United States, knowing the same to be forged, in violation of Title 18, United States Code, §495.

JOHN T. ELFVIN
United States Attorney

A TRUE BILL:

David P. Deegan
Foreman

No. 1973-307

UNITED STATES DISTRICT COURT
WESTERN District of NEW YORK
Division

THE UNITED STATES OF AMERICA

vs.

KEITH C. HALBACH and

JACK E. GILMET

INDICTMENT

A true bill,

W. David P. Dunne

Foreman.

Filed in open court this 13th day
of September, A. D. 1973

Clerk.

Bail, \$ _____

OFFICE COPY

Indictment.

6

* * *

1 BY MR. BURNS:

2 Q. Mr. Finnerty, would you please now read Government's
3 Exhibit 10?

4 A. "City of Buffalo, County of Erie, State of New York.
5 I, Keith C. Halbach, being first duly sworn according
6 to the law, deposes and says, 'I have been advised by
7 Special Agent Patrick J. Finnerty, U. S. Secret Service,
8 that under the provisions of the Constitution I cannot
9 be compelled to be a witness against myself, and knowing
10 that anything I may say may be used against me, I wish
11 to make the following statement of my own free will and
12 accord, without coercion or threat, and without promise
13 of immunity. This statement is a voluntary act on my
14 part, prompted by my desire to tell the facts, and I do
15 not expect to gain any reward or special consideration
16 by reason of having made this statement. I have been
17 advised of my right to consult an attorney and to con-
18 sult with any other individual. I understand that I
19 have the right to have an attorney present and if unable
20 to afford an attorney, one will be appointed for me
21 prior to any questioning. On August 9, 1973, I was liv-
22 ing at 37 Culver Road, Buffalo, New York, with Richard
23 Yox, Jack Gilmet, and my step-brother, Conrad Halbach.
24 On that date I took savings bonds belonging to Richard
25 Yox from a box in the basement. When Jack Gilmet



1 returned home that day I told him and suggested we cash
2 them. Jack Gilmet drove me to the M & T Bank on
3 Abbott Road near Stevenson Street where, using Yox's
4 identification I found in the basement, cashed the
5 first \$1000 savings bond after opening a savings ac-
6 count. I received \$924.80 in cash, and put \$200 in
7 the account. Gilmet and I then tried to cash in bonds
8 at the M & T Bank at Abbott Road Plaza, but were unsuc-
9 cessful. Gilmet and I returned to the M & T at Abbott
10 and Stevenson to cash the bonds, \$3500, but were unsuc-
11 cessful. After the manager questioned me and took the
12 bonds, I fled the bank. Gilmet and I then went to the
13 M & T Bank on Ridge Road in Lackawanna, New York, and
14 withdrew all but \$10 from the savings account. After
15 leaving the bank, Gilmet and I split the money, from
16 which I received about \$560. I forged all the negotia-
17 tions while Gilmet waited outside on each occasion.
18 This statement is true and correct to the best of my
19 knowledge.'" It is signed Keith C. Halbach and Patrick
20 J. Finnerty.

21 MR. BURNS: I have no further questions, your Honor.

22 MR. HILL: No questions.

23 (Witness excused.)

24 MR. BURNS: Jack Gilmet.

25 J A C K G I L M E T, called as a witness on behalf of

1 the Government, and being first duly sworn, testified
2 as follows:

3 (Present: Daniel G. Tronolone, appearing
4 on behalf of the witness, Jack Gilmet.)

5 MR. BURNS: Your Honor, may counsel approach the bench?

6 THE COURT: Yes.

7 (Thereupon Mr. Burns, Mr. Hill and Mr.
8 Tronolone conferred with the Court.)

9 DIRECT EXAMINATION BY MR. BURNS:

10 Q. Mr. Gilmet, by whom are you presently employed?

11 A. I'm not.

12 Q. Did you originally -- did you formerly reside in Buf-
13 falo?

14 A. Yes.

15 Q. Where do you presently reside?

16 A. Phoenix, Arizona.

17 Q. And did you reside in Buffalo in August of 1973?

18 A. Yes.

19 Q. Where were you living then?

20 A. 37 Culver.

21 Q. Was anyone else residing there?

22 A. Yes.

23 Q. Who else was living there?

24 A. Keith Halbach.

25 Q. Anybody else?

1 A. Richard Yox, Conrad LeBelle.

2 Q. Were you employed at that time, Mr. Gilmet?

3 A. No.

4 Q. Now, do you know the defendant in this case, Keith Hal-
5 bach?

6 A. Yes.

7 Q. Is he in this courtroom today?

8 A. Yes.

9 Q. Would you point him out, please?

10 A. Brown shirt.

11 MR. BURNS: Let the record reflect the witness has
12 identified the defendant.

13 BY MR. BURNS:

14 Q. What is your relationship with the defendant, Keith
15 Halbach?

16 A. None.

17 Q. You say you resided together back in August 1973, were
18 you friends or acquainted with one another?

19 A. I knew him.

20 Q. Back on August 9, 1973, did the defendant ever come and
21 speak to you regarding some United States Savings Bonds?

22 A. Yes.

23 Q. What did he say?

24 A. He said he had some bonds that he wanted to be cashed.

25 Q. Where were you, where did the conversation take place?

1 A. In the parlor.

2 Q. In the parlor of what?

3 A. 37 Culver.

4 Q. Would you speak up a little bit? Did he say where he
5 had gotten these bonds?

6 A. From Richard Yox.

7 Q. Did he say more specifically where he found them?

8 A. I think downstairs in the cellar.

9 Q. And did he show them to you?

10 A. No.

11 Q. Did he say what they were?

12 A. Bonds.

13 Q. Did he say they were United States Savings Bonds?

14 A. No.

15 Q. What did he say?

16 A. He just said he had some bonds.

17 Q. What else did he say to you regarding the bonds?

18 A. What do you mean?

19 Q. What did he say to you about the bonds?

20 A. He said he wanted to cash them.

21 Q. Did he say he wanted you to do anything?

22 A. Take him to the bank, drive him to the bank.

23 Q. What did you say to him?

24 A. That I would.

25 Q. Did he say what bank?

- 1 A. No.
- 2 Q. What did you do after you had this conversation?
- 3 A. I drove him to the bank.
- 4 Q. What bank?
- 5 A. The Marine Midland -- the Manufacturers and Traders
6 Trust Company on Abbott Road and Stevenson.
- 7 Q. A bank at Abbott Road and Stevenson?
- 8 A. Yes.
- 9 Q. Did you have any conversation when you were driving
10 to that bank?
- 11 A. No.
- 12 Q. Did Mr. Halbach tell you what he was going to do?
- 13 A. He said he was going to cash the bonds.
- 14 Q. What happened when you arrived at the bank?
- 15 A. He went inside and came out in about ten minutes.
- 16 Q. What did he say to you when he came out of the bank?
- 17 A. That he had cashed one. He wanted to go to another bank
18 to cash another one.
- 19 Q. Did he show you any of the money?
- 20 A. Yes -- not really, he had it in an envelope, a white
21 envelope.
- 22 Q. Did he show you any of the money in the envelope?
- 23 A. No, not then.
- 24 Q. Did he show you any of the bonds?
- 25 A. No.

- 1 Q. Before he went in the bank did you see him write any-
2 thing on the bonds?
- 3 A. No.
- 4 Q. What happened after he got back in the car?
- 5 A. I took him to another bank.
- 6 Q. Was there some conversation before you took him to the
7 bank?
- 8 A. No. He said he cashed one, he wanted to cash another
9 one.
- 10 Q. I beg your pardon, he did what?
- 11 A. He said he cashed one, he wanted to cash another one.
- 12 Q. Did he say how he wanted to cash the other one, by what
13 method, where, how?
- 14 A. Same way, he was going to another bank though.
- 15 Q. Did he tell you where to go?
- 16 A. No.
- 17 Q. Did you drive your automobile from that M & T Bank?
- 18 A. Yes, I went to the L. B. Smith Plaza.
- 19 Q. To another bank in the Plaza?
- 20 A. Yes.
- 21 Q. Do you recall what bank that was?
- 22 A. The same branch.
- 23 Q. Did you ever have any conversation about what was going
24 to be done?
- 25 A. No, just said he was going to cash another one.

1 Q. Then what happened when you arrived at that bank?

2 A. He went inside and came out in about ten minutes and
3 said that the teller wouldn't cash it, that he wanted
4 to go back to the same branch and try to cash another
5 one there.

6 Q. And what did you do?

7 A. I took him.

8 Q. Did he say what bank he wanted to go to?

9 A. To the same bank he already cashed one.

10 Q. Was that the Abbott-Stevenson Branch?

11 A. Yes.

12 Q. Was there any conversation in the car as you were
13 traveling back to that Abbott-Stevenson bank?

14 A. No.

15 Q. Was there any conversation about what was going to be
16 done with these bonds?

17 A. Yes, he said he was going to try to cash them.

18 Q. What happened when you arrived in the vicinity of the
19 bank, the Abbott-Stevenson Branch?

20 A. He went back into the bank, and I went in a store, and
21 when I came out he was in the car, and he said that they
22 took the bonds away from him and the guy was calling
23 somebody on the phone.

24 Q. Did he suggest that you take any particular action then?

25 A. No, he told me to go to a different bank and get the

1 money out that he put in in the savings account.

2 Q. And what did you do?

3 A. I went to another bank. He got the money out that he
4 put in.

5 Q. What bank did you go to then?

6 A. Ridge Road, the one on Ridge Road.

7 Q. Do you know what bank that was?

8 A. Manufacturers and Traders.

9 Q. Did you have any conversation when you were going to
10 that bank?

11 A. No.

12 Q. What happened once you arrived there?

13 A. He went in and got the money out and came back.

14 Q. What happened when he got back to the car?

15 A. We went home.

16 Q. Was there some conversation when he got back to the
17 car about what should be done next?

18 A. No, just that we go back.

19 Q. Did you ever see any of the money, any of the proceeds
20 from the cashing of these bonds?

21 A. Yes.

22 Q. When?

23 A. We were in the car. He came out of the last bank, he
24 gave me some, and then we went home.

25 Q. How much money did he give you?

1 A. \$500.

2 Q. \$500?

3 A. Yes.

4 Q. Had there been any conversation before the bonds were
5 cashed about what the two of you -- how the two of you
6 were going to split up any proceeds from the cashing
7 of the bonds?

8 A. No.

9 Q. None at all?

10 A. No.

11 Q. What happened after you divided up the money between
12 yourselves?

13 A. We went back to 37 Culver, and that's it.

14 Q. Mr. Gilmet, were you originally -- were you also
15 charged in this case?

16 A. Yes.

17 Q. What happened to the charges against you?

18 MR. HILL: Your Honor, I object to this. I think it
19 is completely irrelevant.

20 THE COURT: Sustained.

21 MR. BURNS: I have no further questions, your Honor.

22 MR. HILL: No cross-examination.

23 THE COURT: You are excused.

24 (Witness excused.)

25 MR. BURNS: Your Honor, the Government rests.

1 THE COURT:

I will hear you up here, come up, please.
(Thereupon the following colloquy ensued
at the bench:

4 MR. HILL:

Your Honor, I move for a judgment of acquittal on two of the counts, pursuant to Federal Rule 29(a) of Title 18. this would be a motion under Sub(a), before submission to the jury on the grounds that the evidence is insufficient to sustain a conviction on two of the counts, specifically Count 5, which is the uttering count, and Count 1, which is the conspiracy count. In Count 5 it is alleged that this defendant uttered a forged United States Savings Bond, and under the conspiracy count it is alleged that the object of the conspiracy was a conspiracy to defraud the United States by uttering and publishing as true a forged United States Savings Bond. The fact of the matter here, your Honor, is that these are genuine United States Savings Bonds. There was a forged endorsement but it was a savings bond anyway. There is a good deal of authority for this position, starting with Prussian versus the

1 United States in the Supreme Court, Gesell
2 versus the United States in the Eighth Cir-
3 cuit, and a dissent in Rogers versus the
4 United States in the Fifth Circuit. There
5 was a dissent simply because the majority
6 disposed of the case on other grounds, but
7 the dissent clearly states the point that
8 I am getting at, your Honor.

9 THE COURT: I don't think if that is what those cases
10 hold they are sound, in view of the language
11 of the statute. I deny the motion. What
12 is wrong with the conspiracy count?

13 MR. HILL: The object of the conspiracy is to defraud
14 the United States by uttering forged United
15 States Savings Bonds, again I think that
16 is defective on the same grounds.

17 THE COURT: Denied.

18 MR. HILL: We were discussing before the question of
19 what ruling the Court would make with re-
20 spect to this misdemeanor conviction. You
21 wanted some argument before he took the
22 stand.

23 THE COURT: How long ago was the misdemeanor conviction?

24 MR. HILL: The conviction is a Y.O., not too long ago,
25 within the past year.

- 1 THE COURT: What was it for?
- 2 MR. HILL: Shoplifting.
- 3 THE COURT: I will preclude you from cross-examining
4 on that.
- 5 MR. HILL: He will not be permitted to examine?
- 6 THE COURT: No.
7 (Thereupon the conference at the bench
8 was terminated.)
- 9 THE COURT: Yes, Mr. Hill.
- 10 MR. HILL: Mr. Halbach.
- 11 K E I T H C. H A L B A C H, called as a witness on
12 his own behalf, and being first duly sworn, testified as
13 follows:
- 14 DIRECT EXAMINATION BY MR. HILL:
- 15 Q. Mr. Halbach, will you speak up so I can hear you,
16 please?
- 17 A. Yes.
- 18 Q. How old are you?
- 19 A. I am 18 years old.
- 20 Q. Would you tell us your birth date?
- 21 A. August 4, 1955.
- 22 Q. How far have you gone in school?
- 23 A. I completed my ninth year.
- 24 Q. Are you presently in school?
- 25 A. No, I haven't been back to school since.

- 1 Q. Where are you living now?
- 2 A. Living at 37 Culver.
- 3 Q. With Richard Yox?
- 4 A. Yes.
- 5 Q. And are you employed?
- 6 A. Yes, I work for the Northland Galvanizing Company.
- 7 Q. What do you do there?
- 8 A. I galvanize things.
- 9 Q. Now, do you dispute the fact that you took some United
- 10 States Savings Bonds from Richard Yox?
- 11 A. No.
- 12 Q. You took them to the bank?
- 13 A. Yes.
- 14 Q. And tried to cash them, is that correct?
- 15 A. Yes, sir.
- 16 Q. Okay. Now, when you did this did you know it was wrong?
- 17 A. Yes, I did.
- 18 Q. Did you know it was a violation of the law of New York
- 19 State?
- 20 A. Yes.
- 21 Q. Did you know that Richard Yox would lose some money here?
- 22 A. Yes, sir, I did.
- 23 Q. What did you think these things you took were?
- 24 A. Similar to money, I thought it was Richie's money.
- 25 Q. Did you know there was a separate Federal law governing

1 this situation?

2 THE COURT: Sustained.

3 BY MR. HILL:

4 Q. Did you know at all that the United States Government
5 was involved in this situation?

6 THE COURT: Sustained.

7 MR. HILL: Excuse me, your Honor, I don't understand
8 the basis for it.

9 THE COURT: It is immaterial.

10 BY MR. HILL:

11 Q. When did you first become -- strike that. When did you
12 first learn that the United States Government was in-
13 volved in this situation?

14 THE COURT: Sustained. Since the Government hasn't
15 objected to these questions I will permit
16 him to answer, but I must charge the jury
17 that it is immaterial. If you want to ask
18 him, with full knowledge that I am going
19 to so charge the jury, go ahead.

20 MR. HILL: All right, your Honor. I do this for the
21 purposes of the record, with all respect,
22 your Honor. Thank you, your Honor.

23 THE COURT: That is why I am permitting you to do it.

24 BY MR. HILL:

25 Q. Did you know that there was a separate Federal law

1 covering this situation?

2 A. No, I didn't.

3 Q. Did you know that the Government was involved in any way?

4 A. No.

5 Q. When did you learn that the Government was involved?

6 A. Well, after I ran from the Buffalo Police I called back
7 home to talk with my brother, and he informed me that
8 the Secret Service people were looking for me.

9 Q. And what was your reaction at that time?

10 A. I got scared because that was the first time I heard
11 that the Government was involved. I panicked and stayed
12 away, hiding out for a week, a week and a half.

13 Q. Then what did you do?

14 A. Well, at this time I was renting an apartment out by the
15 airport. I called up the Secret Service people to come
16 pick me up, I was going to turn myself in.

17 Q. Did you give them a statement?

18 A. Yes, I did.

19 Q. Did you give them that statement voluntarily?

20 A. Yes.

21 Q. Why did you do these things?

22 A. Because the Federal Government -- I just found out that
23 the Federal Government was involved and I wanted to
24 cooperate with them, I didn't want to go to jail.

25 Q. Now, before you learned that the Government was involved,

1 in your own mind how did you look at what you had done?

2 A. I just thought I was taking money from Richie.

3 MR. HILL: Thank you. No further questions.

4 CROSS-EXAMINATION BY MR. BURNS:

5 Q. I show you what has been marked Government's Exhibits
6 1 through 6, would you look at those, please? Have
7 you seen those before?

8 A. Yes.

9 Q. What are they?

10 A. These are the bonds I stole from Richard Yox's base-
11 ment.

12 Q. Do you see any printing on the top of the front of each
13 of those bonds?

14 A. Right here?

15 Q. Up at the top?

16 A. Where? Oh, yes.

17 Q. What does it say?

18 A. United States of America.

19 Q. What were you planning to do with these after you had
20 taken them from Mr. Yox, from Mr. Yox's basement?

21 A. Cashing them in at a bank.

22 Q. What did you hope to obtain when you tried to cash them
23 at the bank?

24 A. The face value of them.

25 Q. Did you sign Government's Exhibits 1 and 2, did you sign

- 1 that on the back Richard C. Yox?
- 2 A. Yes.
- 3 Q. What was the purpose for your signing it?
- 4 A. (No response.)
- 5 Q. Was it your purpose to obtain a sum of money?
- 6 A. Yes, it was.
- 7 Q. It was your purpose to obtain a sum of money from whom,
- 8 from the bank?
- 9 A. Yes, that's where I took the bonds.
- 10 Q. That was your intent, after you turned them over to the
- 11 bank, the bank would give you some money?
- 12 A. That's right.
- 13 Q. You said they are similar to money, how do you mean
- 14 they are similar to money?
- 15 A. Well, it's just like a check is similar to money, you
- 16 have to sign on the back to get some money for it.
- 17 Q. Now, you mentioned that you ran from the police. When
- 18 did you first find out that you were wanted in connec-
- 19 tion with these forgeries?
- 20 A. Well, after Jack and I left the last bank we went to
- 21 my house, 37 Culver, and the Buffalo Police came barrel-
- 22 ing in, and was asking for me.
- 23 Q. What did you do when you heard they were looking for
- 24 you?
- 25 A. I told them he was out in the front room. I was sitting

1 in the kitchen.

2 Q. You denied being Keith Halbach?

3 A. Yes.

4 Q. What was the reason for that?

5 A. I was scared, I knew they were looking for me.

6 Q. Why were you scared?

7 A. I was -- just an emotion you have when you do something
8 wrong and you are going to be punished for it, you get
9 scared.

10 Q. Did you know in your mind that you were doing something
11 wrong when you went into the bank?

12 A. Yes.

13 Q. What did you think you were doing wrong?

14 A. Stealing.

15 Q. Stealing?

16 A. Stealing.

17 Q. Did you ever find out that the police or the Secret
18 Service were looking for you later on after August 9?

19 A. Yes, after August 9.

20 Q. Did you go -- when you found out they were looking for
21 you, did you turn yourself in immediately?

22 A. About a week and a half later.

23 Q. What did you do for the week and a half?

24 A. Just wasting time, thinking.

25 Q. You did not turn yourself in during that period?

1 A. Not after I found out. It was about a week and a half
2 after I found out they were looking for me.

3 Q. Did you know they were coming by the house looking for
4 you?

5 A. Yes.

6 Q. What did you do? Were you still at the house?

7 A. No, I wasn't at the house after I ran from the Buffalo
8 Police, I just stayed away.

9 Q. Why didn't you go back to the house?

10 A. Why I knew they would come back, question my brother
11 and Jack Gilmet.

12 Q. You heard Jack Gilmet testify here, you heard several
13 of the other witnesses testifying here regarding these
14 bonds, do you dispute anything they said?

15 MR. HILL: It is a little indefinite, your Honor, I ob-
16 ject.

17 THE COURT: Sustained.

18 BY MR. BURNS:

19 Q. Mr. Halbach, you heard Jack Gilmet testify regarding
20 conversations the two of you had? Didn't you hear
21 Mr. Gilmet?

22 A. Yes, sir.

23 Q. He talked about the two of you getting together and
24 agreeing to go and cash the bonds, did the two of you
25 make that agreement?

1 A. Yes, sir.

2 Q. Did you go to the M & T Bank at Abbott Road and Steven-
3 son?

4 A. Yes, sir, we did.

5 Q. And did you present Government's Exhibit 1, did you
6 present this to the bank?

7 A. Yes, I did.

8 Q. Did they give you money for this bond?

9 A. Yes, they did.

10 Q. Then did you leave the bank?

11 A. Yes.

12 Q. And you went to another bank and tried to cash some
13 more bonds?

14 A. Yes.

15 Q. You were unsuccessful at that time, is that right?

16 A. For the rest of the bonds, yes.

17 Q. You went back again to the Abbott-Stevenson branch and
18 saw Mr. Cleary and tried to cash some more, is that
19 right?

20 A. Yes.

21 Q. You have no dispute with that?

22 A. No.

23 Q. After he refused to cash the next ones for you, you
24 then went to another bank to withdraw the \$200 you de-
25 posited earlier?

1 A. Right.

2 Q. After that the two of you split up the \$1100?

3 A. Yes.

4 Q. Then after finding out that the police were looking for
5 you, the Secret Service was looking for you, you tried
6 to avoid them?

7 A. At first.

8 Q. Is that right?

9 A. Yes.

10 MR. BURNS: I have no further questions, your Honor.

11 MR. HILL: Nothing further, your Honor.

12 THE COURT: You are excused.

13 (Witness excused.)

14 THE COURT: Do you rest?

15 MR. HILL: Yes, your Honor.

16 THE COURT: Do you wish to make a motion?

17 MR. HILL: I renew the motions that I made at the end of
18 the prosecution's case, your Honor on the same
19 grounds.

20 THE COURT: Denied. We will sum up after lunch. We will
21 recess now until 2:15. The jury may be excused
22 for lunch. Do not talk about the case, do
23 not let anybody talk about it with you.
24 Please return at 2:15.

25 (Thereupon the jury exited the courtroom.)

1 impossible in human affairs. You should
2 review all of the evidence as you remember
3 it, sift out what you believe and discuss,
4 analyze, weigh and compare your view of
5 the evidence with that of your fellow
6 jurors, and if that process produces a
7 solemn belief or conviction in your mind,
8 such as you would be willing to act upon
9 without hesitation if this were an impor-
10 tant matter of your own, then you may say
11 that you have been convinced beyond a
12 reasonable doubt. On the other hand, if
13 your mind is wavering or so uncertain that
14 you would hesitate before acting, if this
15 were an important matter of your own, then
16 you have not been convinced beyond a
17 reasonable doubt, and your verdict must
18 be not guilty.

19 Now, the indictment in this case con-
20 tains five counts. Each of these counts
21 charges a separate offense or crime, and
22 each must be considered separately. The
23 indictment names two defendants, but only
24 one of them is on trial before you, Keith
25 C. Halbach. He is the person whose guilt

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1 or innocence you must announce in your
2 verdict, although, as I will explain to
3 you shortly, in considering his guilt or
4 innocence, you may have to determine the
5 nature of the participation, if any, of
6 Jack E. Gilmet.

7 In determination of innocence or guilt,
8 however, you must bear in mind that guilt
9 is personal. There is no such thing under
10 our system of justice as guilt by mere
11 association. The guilt or innocence of
12 the defendant on trial before you must be
13 determined separately with respect to him,
14 solely on the evidence presented against
15 him or on the lack of evidence.

16 Let us turn now to the specific charges
17 against this defendant. The indictment
18 here charges the defendant, Keith Halbach,
19 with five crimes. Counts II, III and IV
20 charge that the defendant forged the
21 endorsement of Richard C. Yox on each of
22 three \$1000 United States Savings Bonds,
23 owned and payable to Yox, for the purpose
24 of obtaining or receiving from the United
25 States a sum of money. Count V charges

1 the defendant with uttering and publishing
2 as true a forged \$1000 United States Savings
3 Bond, owned by Yox, with intent to defraud
4 the United States, knowing the same to be
5 forged. Count I charges the defendant with
6 a conspiracy to defraud the United States
7 and to commit offenses against the United
8 States by uttering and publishing as true
9 the United States Savings Bonds.

10 Now, Counts II, III and IV charge the
11 defendant with violating a law which in
12 pertinent part provides:

13 "Whoever forges a writing for the
14 purpose of obtaining or receiving, either
15 directly or indirectly, from the United
16 States any sum of money, shall be guilty
17 of an offense against the United States."

18 A forgery, for our purposes here, is
19 simply the endorsement of the payee's name
20 on the back of a genuine United States
21 Savings Bond without the permission or
22 authority of the true owner, the payee,
23 Richard Yox, and if it is done with an
24 intent to defraud.

25 The term "writing" includes any

1 endorsement purporting to be that of the
2 payee on the back of a United States
3 Savings Bond.

4 You may conclude that the defendant
5 had a purpose to receive or obtain a sum
6 of money from the United States if you find
7 that he intended to obtain or receive money
8 from the bank, for the bank was the Govern-
9 ment's agent for the redemption or payment of
10 the bonds in question in each of these
11 counts, and the automatic consequence of
12 the bank's cashing or redeeming the bonds
13 was that the defendant would obtain or
14 receive money from the United States
15 indirectly, because the United States was
16 ultimately liable for payment of the bonds
17 to the rightful owner, Yox.

18 In order to convict the defendant on
19 Counts II, III and IV of the indictment
20 the Government must prove, as to each
21 count, each of the following elements
22 beyond a reasonable doubt: One, that the
23 defendant made the written endorsement
24 Richard C. Yox on the back of the United
25 States Savings Bond described in the

1 count you are considering. There is no
2 dispute in the evidence that the defendant
3 did sign Richard C. Yox on the back of
4 these bonds, he admitted that on the witness
5 stand. The second element is that the
6 defendant endorsed Yox' name without his
7 authority or permission, with an intent
8 to receive or obtain a sum of money,
9 directly or indirectly, from the United
10 States or any officers or agents of the
11 United States. Again, there is no dispute,
12 the defendant admitted that he signed the
13 bonds without the authority or permission
14 of Yox. He claims, however, as I understand
15 his testimony, that he did not know that he
16 was receiving the sum of money from the
17 United States. It is enough if he knew
18 that he was receiving it from the banks,
19 which were acting as agents of the United
20 States, as I just explained. The third
21 element is that the defendant acted knowing-
22 ly and with an intent to defraud the United
23 States.

24 Count V charges the defendant with
25 violating a law which provides in pertinent

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part that:

"Whoever utters or publishes as true any such forged writing, with intent to defraud the United States, knowing the same to be forged, shall be guilty of an offense against the United States."

For our purposes, the phrase "utters or publishes as true" means to cash or to attempt to cash or to place in circulation a United States Savings Bond by any false statement, representation or claim that the payee's endorsement on the back of the bond is genuine or made with the payee's permission or authority.

In order to convict the defendant on Count V, the Government must prove to your satisfaction, beyond a reasonable doubt, each of the following elements: One, that the defendant cashed or attempted to cash or place in circulation the United States Savings Bond described in Count V. Here, again, there is no dispute about it, the defendant admitted that he did that. Two, that the payee's endorsement on the bond had been forged. Again, there is no

1 dispute about it, the defendant admitted
2 it. Three, that the defendant knew that
3 the payee's endorsement had been forged.
4 Again, the defendant admitted that. Four,
5 that the defendant acted knowingly, and
6 with an intent to defraud the United States.
7 There the defendant's position is, as I
8 understand it, that he did not know that
9 he was violating any law of the United
10 States, and, as I advised counsel at the
11 time, he does not have to know that. It
12 is enough that he knows what he is doing,
13 that he acts intentionally and not as a
14 result of mistake, and that he intended to
15 defraud the bank, that is enough.

16 Intent to defraud is the essence of
17 the crimes charged in Counts II, III, IV
18 and V. However, the evidence in the case
19 need not establish that the United States
20 or anyone else was actually defrauded, but
21 only that the defendant acted knowingly
22 and with an intent to defraud.

23 To act with an intent to defraud means
24 to act with an intention to deceive or to
25 cheat, ordinarily for the purpose either

1 of causing some financial loss to another
2 or bringing about some financial gain to
3 one's self. The bank, as I have told you,
4 was acting as the Government's agent in
5 redeeming the bonds in question. The
6 element of intent to defraud the Government
7 is therefore satisfied if you find that
8 the defendant knowingly and intentionally
9 intended to deceive the bank about any
10 material fact by means of false representa-
11 tions, forgery, deceit, false impersonation,
12 false identification or other false
13 pretenses, for the purpose of causing the
14 bank to redeem or to cash the bonds, and
15 to gain the proceeds of the bonds for his
16 own use and benefit, against the rights
17 of their true owner, Richard Yox. This
18 element is also satisfied if you find that
19 the defendant admitted acts of forging the
20 payee's name on the back of the bonds, and
21 in cashing or attempting to cash them for
22 his own use interfered with the governmental
23 function of borrowing and repaying money.

24 One of the functions of the United
25 States is to borrow money for the operation

1 of the government, to support an army and
2 a navy, and many other programs of the
3 federal government, and since the government
4 needs enormous sums, it is necessary for
5 the government to borrow small amounts
6 from a multitude of investors and lenders.
7 Savings bonds are issued in small denom-
8 inations and, unlike currency, they are
9 not payable to the bearer, but payable
10 only to the named payee or to his author-
11 ized agent upon the payee's genuine
12 endorsement. This gives the bond owner
13 a measure of safety and security against
14 theft and forgery, and makes the bonds
15 attractive to small investors, who may
16 keep them in their homes without undue
17 risk of financial loss, for the government
18 is obliged to make good if the bonds are
19 stolen and redeemed by the thief by forging
20 the signature of the payee. The redemption
21 and payment of the proceeds of the bonds
22 to their true owner is thus an important
23 governmental function, and if you find
24 that the defendant's act or acts inter-
25 fered with that function, you may conclude

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that he had the requisite intent to defraud the government.

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Now, you will note that in describing the elements of the crimes charged here, I have said that the defendant must have acted knowingly and intentionally. Now, this does not mean that a defendant must be aware that his conduct is criminal or that it violates any law of the United States. It simply means that he must know what he is doing, that he makes a conscious choice in his actions, that he was acting freely and voluntarily, deliberately and on purpose, and not because of mistake, accident, carelessness or other innocent reason. The key to this element of the crime is the defendant's guilty knowledge and intent.

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Now, in determining the intent of a defendant it is obviously impossible to look into his mind; however, intent and knowledge may be inferred from the way a defendant acts, and by what he said, in light of all the surrounding circumstances. The adage "actions speak louder than words"

1 is the best guide to determining the intent
2 of a defendant.

3 In determining the defendant's intent,
4 therefore, you should consider such evid-
5 ence as you recall and believe, as to the
6 manner in which the defendant acquired and
7 cashed or attempted to cash these bonds,
8 and the use which he made or intended to
9 make of the proceeds. You should also
10 consider whether he used any false iden-
11 tification or otherwise deceived or misled
12 the bank to believe that he was the true
13 owner and payee of the bonds, and whether,
14 of course, in forging the bonds he intended
15 to deceive the bank.

16 This brings us to Count I. Count I
17 charges that beginning on or about August
18 9, 1973, the defendant, Keith C. Halbach,
19 and Jack E. Gilmet unlawfully, willfully
20 and knowingly conspired and agreed together
21 and with each other to defraud and to
22 commit offenses against the United States
23 by uttering and publishing as true forged
24 United States Savings Bonds.

25 In order to convict the defendant

1 Halbach on Count I the Government must
2 prove to your satisfaction, beyond a
3 reasonable doubt, each of the following
4 three elements: One, the existence of
5 a conspiracy beginning on or about August
6 9, 1973, for the purpose of willfully,
7 knowingly and intentionally defrauding
8 the United States, and committing offenses
9 against the United States, by uttering
10 and publishing as true forged United States
11 Savings Bonds. Two, that the defendant
12 Halbach joined the conspiracy with knowledge
13 of its unlawful purpose. Three, that any
14 one of the conspirators, whether or not
15 the defendant Halbach, committed at least
16 one overt act in furtherance of the objects
17 of the conspiracy.

18 What is a conspiracy? A conspiracy,
19 for our purposes, is simply a combination
20 or agreement among two or more people to
21 violate the law, as charged in Count I
22 of the indictment. In other words, an
23 agreement to forge and utter as true
24 United States Savings Bonds. Thus, a
25 conspiracy is a kind of partnership in a

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1 criminal purpose. The gist of the crime
2 is the combination or agreement, itself,
3 to violate the law.

4 This does not mean that two or more
5 persons must meet and sign a formal
6 partnership agreement or that they must
7 sit down and agree in so many words on
8 what their unlawful plan or scheme is to
9 be or how they are going to carry it out.

10 The first element is satisfied if you
11 find beyond a reasonable doubt that any
12 two or more people in any way intentionally
13 combined or agreed to a common plan, know-
14 ingly and intentionally, to defraud the
15 United States or to commit offenses against
16 the United States by uttering and publishing
17 as true forged United States Savings Bonds.

18 A conspiracy may be found to exist
19 although the purpose of the conspiracy is
20 never accomplished. Proof, however, that
21 the conspiracy was accomplished is the
22 most persuasive evidence of the existence
23 of the conspiracy itself.

24 Now, the second element, which the
25 Government is required to prove beyond a

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reasonable doubt is that the defendant joined the conspiracy with knowledge of its unlawful purpose. When I say "joined the conspiracy," I do not mean that the defendant has to apply for some kind of a membership. Before one can be found to be a conspirator, however, he must know about the conspiracy and of its unlawful purpose, and voluntarily and knowingly join in the criminal venture, with an intent to combine with others in violating the law. He must knowingly promote the scheme or have some kind of a stake in its outcome. In this connection, you will apply my earlier instructions regarding the subject of knowledge and intent. One may become a member of a conspiracy without knowing all of the details or all of the operations of the conspiracy. One defendant may know only one other member of the conspiracy, yet if he knowingly cooperates to further the illegal purpose of the conspiracy, with knowledge that others have combined to violate the law, he becomes a member, although his own role may be

1 insignificant. If you find that a defendant
2 did join the conspiracy, then he is bound
3 by what others say and do to promote and
4 further the venture, even though he, him-
5 self, is not present. This is so because
6 each conspirator is the agent or partner
7 of every other conspirator.

8 The third element of the crime of
9 conspiracy is the commission by any
10 conspirator of at least one overt act in
11 furtherance of the objects of the con-
12 spiracy.

13 An overt act means an act by any member
14 of the conspiracy in an effort to accomplish
15 some purpose of the conspiracy. The reason
16 the law of conspiracy requires an overt
17 act is because a person might agree to
18 commit a crime and then change his mind.
19 Therefore, before a defendant can be con-
20 victed of the crime of conspiracy, one or
21 more of the conspirators must have taken
22 at least one step or performed one single
23 act which moved toward carrying out the
24 unlawful intent to commit the crime.

25 The Government here has alleged twelve

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1 overt acts, and you will note upon reading
2 the indictment, which I will send in to
3 you, that some of these acts are innocent
4 in and of themselves. Nevertheless, if
5 those acts were performed by any member
6 of the conspiracy, whether or not it is
7 the defendant on trial, and those acts
8 were performed during the existence of
9 the conspiracy and in furtherance of its
10 purpose, then those acts are sufficient
11 to satisfy the third element. The Govern-
12 ment is not required to prove that each
13 of the overt acts alleged was committed.
14 It is enough if the Government proves
15 beyond a reasonable doubt that at least
16 one of the overt acts charged was committed
17 in furtherance of the conspiracy by one
18 or more members of the conspiracy.

19 As I told you, you must consider each
20 count of this indictment separately. If
21 you find, as to the count which you are
22 considering, that the Government has failed
23 to prove each of the elements of the crime
24 charged in that count, as I have defined
25 those elements, then you should acquit the

Charge of the Court.

1 defendant, Keith Halbach, on that count.

2 On the other hand, if, as to the count
3 which you are considering, you find that
4 the Government has proved beyond a reason-
5 able doubt all of the elements of the
6 crime charged in that count, as I have
7 defined them, then you should convict
8 the defendant Halbach on that count.

9 You are instructed that the question
10 of possible punishment of the defendant
11 in the event of conviction is no concern
12 of yours, and should not in any sense
13 enter into or influence your deliberations.
14 The duty of imposing sentence in the event
15 of a conviction rests exclusively upon the
16 Court. The function of the jury is to
17 weigh the evidence in the case and determine
18 the guilt or innocence of the defendant
19 solely upon the basis of such evidence.

20 When you retire to the jury room, treat
21 one another with consideration and respect,
22 as I know you will. If differences of
23 opinion arise, discussions should be
24 dignified, calm and intelligent. Your
25 verdict must be based on the evidence and

1 the law, the evidence which was presented
2 in this case, as you remember it, and the
3 law as I give it to you in this charge.

4 You are each entitled to your own
5 opinion. No juror should acquiesce in a
6 verdict against his individual judgment.
7 Nevertheless, I would point out that no
8 one should enter the jury room with such
9 pride of opinion that no matter how
10 persuasive or convincing the argument of
11 his fellow jurors, he would refuse to change
12 his mind. Discussion and deliberation
13 are part of our democratic jury process,
14 and your deliberations should be approached
15 in that spirit. Talk out your differences.
16 Each of you, in effect, should decide the
17 case for himself after thoroughly reviewing
18 the evidence and frankly discussing it
19 with your fellow jurors, with an open mind
20 and with a desire to reach a verdict. If
21 you do that you will be acting in the
22 true democratic process of the American
23 jury system.

24 There are twelve of you on this jury.
25 The alternates will be excused, with the

1 thanks of the Court, before you retire
2 for your deliberations. Any verdict must
3 be the unanimous verdict of all of you
4 as to each defendant, and it must represent
5 the honest conclusion of each of you.

6 I submit the case to you with every
7 confidence that you will fully measure up
8 to the oath which you took as members of
9 the jury, to decide the issues submitted to
10 you fairly and impartially, and without
11 fear or favor.

12 Now, members of the jury, if you find
13 that the Government has failed to establish
14 the guilt of the defendant beyond a reason-
15 able doubt, you should acquit the defendant.
16 If you find that he has not violated the
17 law, you should not hesitate for any
18 reason to render a verdict of not guilty.
19 But, on the other hand, if you find that
20 the Government has established the guilt
21 of the defendant beyond a reasonable doubt,
22 you should not hesitate because of sympathy
23 or any other reason to render a verdict
24 of guilty.

25 When you retire to the jury room you

1 will elect someone to act as your foreman
2 or forelady from among your members, and
3 the foreman or forelady will return an
4 oral verdict in open court of guilty or
5 not guilty as to each of the five counts
6 of this indictment.

7 Are there any exceptions, gentlemen?
8 If so, I will hear you up at the side bar.

9
10 (Thereupon the following conference ensued
11 at the side bar:

12
13 MR. BURNS: I have no exceptions, your Honor.

14 MR. HILL: I have a few, your Honor. First, relative
15 to the charge of forgery, I recall the
16 Court charging, with respect to intent,
17 in terms of a general intent to defraud,
18 as opposed to a specific intent to defraud
19 the United States. I respectfully except
20 to that portion of the charge.

21 THE COURT: I note your exception.

22 MR. HILL: Thank you. Further on in the charge you
23 charged that it was -- I think covered
24 this way -- that it was not necessary
25 that the defendant have known that he was

1 violating the law of the United States,
2 it was enough that he intended to defraud
3 the bank. I except to that portion of
4 the charge. Relative to Count V, concern-
5 ing the forged United States Saving Bonds,
6 you charged in terms of a payee's endorse-
7 ment being forged, as opposed to it being
8 a forged savings bond. We have been over
9 this ground before.

10 THE COURT:

I note these exceptions.

11 MR. HILL:

12 Thank you. You charged, relative to
13 interference with governmental function.
14 I except to that portion of the charge,
15 there being no proof bearing on this
16 theory in the record, at least to my
17 recollection, and with respect to the
18 Court's charge on knowingly -- act knowingly
19 and intentionally, the charge was in essence
20 that he must act freely and voluntarily,
21 and so forth. I except to that portion of
22 the charge as it omits any requirement of
23 specific intent to defraud the government.
Those are my exceptions.

24 THE COURT:

25 I am not in full accord with what you say
I charged. The record will show what I

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1 charged.

2 MR. HILL: One other thing, your Honor, with respect

3 to the requests -- this is the exhibit

4 that the Court marked with my requests to

5 charge --

6 THE COURT: Let the record reflect that my rulings

7 are in the margin in my own handwriting

8 in pencil.

9 MR. HILL: May that be marked?

10 THE COURT: It may be marked Court Exhibit A. Was

11 that voir dire marked?

12 MR. HILL: No, your Honor.

13 THE COURT: We will mark that Court Exhibit B.

14

15 (Thereupon the conference at the side bar

16 was terminated.)

17

18 (Thereupon two deputy marshals were duly

19 sworn.)

20

21 THE COURT: All right, the jury may retire. Follow

22 the marshals.

23 THE CLERK: The two alternates, please be seated in

24 the rear of the courtroom. You will not

25 go down.

1 (Thereupon the jury exited the courtroom
2 at 10:20 A.M., and the court was in recess
3 awaiting the return of the jury.)
4

5 (Thereupon the jury returned to the
6 courtroom at 11:30 A.M.)
7

8 (Defendant present, counsel present.)
9

10 THE COURT:

11 I have your note asking, "Does the word
12 'knowingly' in Count I mean that the
13 defendant knew he was defrauding the
14 United States government?" I am sure you
15 have in mind the defendant's testimony to
16 the effect that he knew what he was doing
17 was wrong, that he thought he was violating
18 only a state law, that he did not realize
19 or know that he was defrauding the United
20 States, words to that effect, that he did
21 not intend to defraud the United States.
22 The first question you have to decide is
23 whether you believe that, and in that
24 connection, you should look at the language
25 on the bond and see whether, in the face
of that, you can credit that testimony.

1 Now, if you don't believe it, you have no
2 other problems, if you do believe it you
3 still have no problems, because, as I
4 explained with some detail, it is not
5 necessary that the defendant know that he
6 is violating a federal law or that he is
7 defrauding the United States, it is no
8 part of the crime. It is sufficient if
9 he knows that he is defrauding the bank.
10 The bank was the agent of the United States,
11 and ultimately the government has to make
12 good if the bank pays on the forged
13 endorsement on those bonds. So it is
14 sufficient if he knew that he was defrauding
15 the bank of money. I also explained with
16 some detail that it is also sufficient
17 to an intent, a knowing intent to defraud
18 the United States if you find that his
19 act is an intentional, deliberate act,
20 specifically, forging these bonds, cashing
21 them, and getting the money for his own
22 use, either by depositing it in the bank
23 or taking it out to blow on something for
24 his personal use, interfered in any way
25 with the governmental function of paying

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1 its just obligations, these savings bonds,
2 and that also would constitute a knowing
3 intention to defraud the United States.
4 You may retire for further deliberation.

5
6 (Thereupon the jury exited the courtroom
7 at 11:40 A.M., and the court was in recess
8 awaiting the return of the jury.)

9
10 (Thereupon the jury returned to the
11 courtroom at 11:55 A.M.)

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13 (Defendant present, counsel present.)

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15 THE COURT: All right, proceed.

16 THE CLERK: Ladies and gentlemen of the jury, have you
17 agreed on your verdict?

18 FORELADY: Yes.

19 THE CLERK: What is your verdict as to the defendant,
20 Keith C. Halbach, on Count I?

21 FORELADY: Guilty.

22 THE CLERK: Count II?

23 FORELADY: Guilty.

24 THE CLERK: Count III?

25 FORELADY: Guilty.

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1 THE CLERK: Count IV?
2 FORELADY: Guilty.
3 THE CLERK: Count V?
4 FORELADY: Guilty.
5 THE CLERK: Please listen as the clerk of the court
6 records your verdict. You find the defendant
7 guilty on Count I, guilty on Count II,
8 guilty on Count III, guilty on Count IV,
9 guilty on Count V. So say you all?

10

11 (Thereupon there was an affirmative response
12 from the jury.)

13

14 THE COURT: I want to thank you for the careful attention
15 you gave to this case. I apologize for
16 keeping you waiting a few minutes after
17 you reached your verdict. The Court has
18 another case commencing, the lawyers are
19 in the middle of their opening statements,
20 and I could not properly interrupt them.
21 This was a very unusual case, there really
22 was no defense to it. But it had to have
23 a trial because defense counsel has a
24 different view of the law than the Court,
25 not that there is anything wrong with an

1 interchange of view. The only way he
2 can test the burden of the law is to
3 first go through the trial and appeal.
4 So there was not really any other verdict
5 you could have reached. You are excused
6 now until tomorrow morning at ten o'clock,
7 unless we call you tonight and tell you
8 not to come in, unless you are notified
9 otherwise.

10
11 (Thereupon the jury exited the courtroom
12 at 12 Noon.)
13

14 THE COURT: Mr. Hill?

15 MR. HILL: Excuse me?

16 THE COURT: Do you have some motions?

17 MR. HILL: Could I make those later, your Honor?

18 THE COURT: Yes, if you wish, reserve your motions
19 until the time of sentence. We will set
20 sentence for -- do you have a calendar
21 there?

22 THE CLERK: I'm sorry, your Honor.

23 THE COURT: It will be the last Thursday in May, whatever
24 date that is.

25 MR. HILL: Very well, your Honor. Thank you.

Cr. Form No. 25a

United States of America

Y.

THEODORE G. WALBACH

Indikator

No. **CR-1973-307**

On this 30th day of May 1974 came the attorney for the government and the defendant appeared in person and with counsel.

IT IS ADJUDGED that the defendant upon his plea of ~~NOT GUILTY~~, a verdict of guilty on April 30, 1970,

Conspiracy to commit offenses against the U.S., by to utter and publish as true, forged U.S. Savings Bonds, (Ct.1), in violation of Title 18, U.S.Code, Section 371; Forging the endorsement on a U.S. Savings Bond (Cts. 2,3,4); Utter and publish as true a forged U.S. Savings Bond, knowing the same to be forged (Ct. 5), in violation of Title 18, U.S.Code, Section 493,

La Cuenta Dos thru Five

as charged:

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

~~XX~~
~~XX~~ It is ~~ADVISOR~~ ~~ADVISED~~ that the defendant is hereby committed to the custody of the Attorney General or
his authorized representative for imprisonment for a period of ~~4~~

Defendant is sentenced as a Youthful Offender on each of Counts One through Five, pursuant to Title 18, U.S. Code, Section 5010(b), and he is committed to the custody of the Attorney General for treatment and supervision until discharged by the Federal Youth Correction Division of the Board of Parole, as provided in Section 5017(s) of Title 18, U.S. Code. The sentences imposed on each of Counts One through Five are to run concurrently.

XXXXXXXXXXXXXXXXXXXX
IT IS ADJUDGED that:

It is ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

WOTD F. HARRIS

The Court recommends commitment to

LLOYD F. MacMAHON

United States District Judge.
JOHN K. ADAMS

~~SECRET - E - A2000~~

Clerk

A True Copy. Certified this _____ day of _____

(Signed)

Clerk.

(By)

Deputy Clerk.

APPROVED: JOHN T. ELFIN, U.S. Attorney

By: THEODORE J. BURNS, Assistant
U.S. Attorney

AFFIDAVIT OF SERVICE BY MAIL

State of New York)
County of Genesee) ss.:
City of Batavia)

RE: U. S. A.
v
Keith Halbach
Docket No. 74-1761

I, Roger J. Grazioplene being
duly sworn, say: I am over eighteen years of age
and an employee of the Batavia Times Publishing
Company, Batavia, New York.

On the 18 day of September, 1974
I mailed 2 copies of a printed Appendix in
the above case, in a sealed, postpaid wrapper, to:

Sean D. M. Hill, Esq.

475 Delaware Avenue

Buffalo, New York 14202

at the First Class Post Office in Batavia, New
York. The package was mailed Special Delivery at
about 4:00 P.M. on said date at the request of:

John T. Elfvin, U. S. Attorney

502 U. S. Courthouse, Buffalo, New York 14202

Roger J. Grazioplene

Sworn to before me this

18 day of September, 19 74

Monica Shaw

MONICA SHAW
NOTARY PUBLIC, State of N.Y., Genesee County
My Commission Expires March 30, 1975